

## SANCTIONS AND PROSECUTION POLICY

### HOUSING AND COUNCIL TAX BENEFIT, LOCALISED COUNCIL TAX SUPPORT AND COUNCIL TAX DISCOUNTS

#### Preface

This policy is for guidance only. The council will consider each case on its own merits before deciding what action, if any, to take. Alternatives to prosecution will be considered, where appropriate.

#### Introduction

This document provides the agreed framework for council officers involved in the investigation, sanction and prosecution of:

- Housing benefit (HB) and Council tax benefit (CTB) fraud (and associated national benefits) in accordance with the Social Security (Local Authority Investigations and Prosecutions) Regulations 2008 (S.I.2008/463), the Fraud Act 2006, the Theft Act 1968, the Proceeds of Crime Act 2002 and the Welfare Reform Act 2012
- Localised council tax support (LCTS) fraud (from April 2013), in accordance with The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, the Fraud Act 2006, the Theft Act 1968 and the Proceeds of Crime Act 2002
- Council tax discount (CTD) fraud, in accordance with the Council Tax (Administration and Enforcement) Regulations 1992 (S.I.1992/613), the Fraud Act 2006, the Theft Act 1968 and the Proceeds of Crime Act 2002

The council is committed to protecting the public funds it administers:

- By making it clear to residents and landlords that they have a responsibility to provide accurate and timely information about claims for HB, CTB, LCTS and CTD
- Through the investigation of suspected fraudulent claims
- Through the subsequent sanctioning and prosecution of offenders

## **Counter fraud policy statement**

The council recognises the importance of securing public confidence in the services it provides and recognises that the loss of public funds through fraud and other dishonest activity serves only to undermine this confidence.

The council acknowledges that the majority of its customers are honest; however, it also acknowledges that there are a small minority who will knowingly and/or dishonestly claim when aware they are not entitled to claim.

To this end, the council will maintain and support a dedicated fraud investigator in conjunction with the fraud team leader / partnership manager who shall have delegated responsibility for the prevention, detection, investigation and referring to a prosecuting body, cases of suspected fraud. The council will ensure that all investigations are undertaken by professional and suitably qualified staff. Furthermore, all investigations will be undertaken in a fair and proportionate manner and in accordance with stated best practice and applicable criminal and civil law.

The council commits itself to actively participating and working with other local authorities and partnership agencies to reduce the threat of fraud by active liaison, data matching, joint investigations and the joint application of sanctions and prosecutions.

## **Review**

Each case referred to the prosecutor should be reviewed to ensure that it meets the evidential and public interest test set out in this policy and the Code for Crown Prosecutors.

The process of review is continuing and the prosecutor must take into account any change in circumstances. The prosecutor should work closely with all involved with the Fraud Investigation Officer (FIO) and the Fraud Team Leader (FTL) to reach the correct decision. The final responsibility for the decision to prosecute rests with the prosecutor.

## **Sanctions and prosecution**

When council staff have completed a criminal investigation, they will consider whether there is sufficient evidence to instigate criminal proceedings or offer an alternative sanction. Each case will be considered on its own merits having full regard to the requirements of the Code for Crown Prosecutors (see appendix to the policy) and council policy.

Where the council is able to prove beyond all reasonable doubt that a criminal offence has occurred, in addition to recovering the overpayment, the council can:

- Take no action
- Administer a local authority caution
- Invoke an administrative penalty
- Prosecute

### **Prosecution**

The council will consider instituting proceedings where the 'Evidential Test' and 'Public Interest Test' detailed in the Code for Crown Prosecutors are satisfied and any one or more of the following apply:

- The overpayment is over £2,000
- The offence(s) have been committed over a long period of time
- The offence(s) were planned or systematic
- There were other persons involved in the fraud
- The person occupied a position of trust and/or authority
- It was not a first offence

In addition, where employees or elected members are involved in the commission of the offence(s), then the council would consider prosecuting the offender and other persons directly involved in the offence.

Every case will be considered on its own merits and action will be considered as appropriate. It may still be considered necessary to instigate proceedings for some cases falling outside the criteria above; these include (but are not limited to):

- An administrative penalty has been offered and either refused or has been withdrawn
- A caution has been offered as an alternative to prosecution and is refused

When deciding what offence an offender should be charged with, the council will select charges which:

- Are appropriate to the offence
- Reflect the seriousness of the offence
- Give the court adequate sentencing powers
- Enable the case to be presented in a clear and simple way

The council will not charge the offender with any more offences than it considers necessary.

### **Administrative penalty**

Where the council has sufficient evidence to consider prosecution, it may choose to offer the offender an administrative penalty. Section 15 Social Security Administration Act 1992 introduced the penalty against overpayments of housing benefit and/or council tax benefit, setting the rate at 30% of the gross fraudulent overpayment of benefit. In cases where the offence has occurred wholly on / after 8 May 2012, the penalty rate will be levied at 50%.

Regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Error) (England) Regulations 2013 introduced the penalty against excess payments of council tax support. The penalty is set at 50% of the Council tax support which was paid **in excess** of that to which the person was entitled, with a minimum penalty amount of £100.

It will be considered as an alternative to prosecution in cases where:-

- There is no factor which warrants prosecution as the first option
- There are factors which would mean that prosecution should not be considered before an administrative penalty has been offered as an alternative sanction
- The offence(s) was not planned or systematic
- The person has not committed a similar offence in the last five years
- There was no other person involved in the fraud
- It is possible to recover the administrative penalty

For an administrative penalty to be offered, the following conditions must be satisfied:

- There must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction
- There has been an overpayment of benefit and/or there has been an excess payment of council tax support as the direct result of an act or omission on the part of the person
- The offender must accept the administrative penalty

That fact that an administrative penalty has been administered will be a factor when making the public interest test, should the offender commit further like offences.

An administrative penalty is offered as an alternative to prosecution. Where an administrative penalty is not accepted, or where it is initially accepted but the person later withdraws their agreement within the specified time-limits (14 and/or 28 days), unless there are exceptional circumstances, the council will instigate criminal proceedings (i.e. prosecution).

### **Local authority caution**

A caution is given in certain circumstances as an alternative to prosecution, to a person who has committed an offence. It is intended to be a meaningful penalty and deterrent for those persons where criminal proceedings are not a first option and penalty action is not appropriate. The ability to offer a caution is based on the principle that a prosecuting authority is not under any obligation to prosecute.

Where the council has sufficient evidence to consider prosecution, it may choose to offer the offender a simple caution, (known as a formal caution prior to the introduction of conditional cautions in 2005), as an alternative to prosecution, in cases where:

- There is no factor which warrants prosecution as the first option
- There are factors which would mean that prosecution should not be considered before a caution has been offered as an alternative sanction
- The offence(s) were not planned or systematic
- The person has not committed a similar offence in the last five years
- The person has made a full and frank admission of the offence
- There was no other person involved in the fraud
- It is not in the public interests to prosecute and / or it is not feasible to recover an administrative penalty

Before a formal caution may be offered and administered, the following conditions must be satisfied:

- There must be evidence of the offender's guilt that is sufficient to give a realistic prospect of conviction
- The offender must fully admit the offence to a Fraud Investigation Officer during an interview under caution or by written statement
- The offender's previous conduct must be such that the administration of a caution is appropriate
- The offender must understand the significance of the caution and give informed consent to receiving a formal caution

The council may offer formal cautions by virtue of common law.

### **No further action**

There may be occasions where there is sufficient evidence to provide for a realistic prospect of conviction but the personal circumstances of the offender and / or the circumstances surrounding the commissioning of the offence are so exceptional that the council will not pursue the matter further.

In this instance, the council will consider exceptional circumstances as being:

- The personal circumstances of the offender are so exceptional (due to serious financial or health matters affecting the claimant, their partner or any dependant member of their family) that the council will take no further criminal action
- The council has been partly culpable or has made serious failings that have contributed to the commissioning of the offence

Whilst taking no further criminal action, the council will still seek to recover all overpaid benefit through civil law means.

### **Suitability of offenders for prosecution**

When considering whether it is appropriate to instigate proceedings, the council's investigating officer will consider if there is sufficient admissible evidence to justify bringing a prosecution and if the prosecution is in the public interest.

The following paragraphs outline the factors, which will be considered, to ensure consistent and equitable treatment of those accused of fraud:

- **Financial limits**

Careful consideration will be given to commencing a prosecution where the amount of the fraudulent activity has not resulted in 'significant financial gain' to the offender (for example, the amount of the fraudulent overpayment is less than the cost of proceedings).

Where there is no significant financial gain, a prosecution could still be considered if it is felt that the fraud was a deliberate attempt to gain money by deception (for example, if the fraud has been discovered after a relatively short space of time and a significant financial gain has not yet occurred), or in the case of a persistent offender or any other case, where prosecution would be warranted.

An initial financial guideline figure of £2,000 has been established as the minimum amount at which the council would consider a case suitable for referring for prosecution, unless there were aggravating factors (for example, previous history of fraud or where the offences were planned).

- **Physical / mental factors**

Consideration will be given to the defendant's mental and physical condition (including age) when deciding whether to prosecute. The investigating officer will consider whether there are significant personal or mental problems that may have contributed to the reasons for committing the offence. In addition, due consideration will be given where there is any evidence to suggest that the claimant or partner or a third party (for example, a child) would be severely affected by the action.

- **Voluntary disclosure**

It may not be appropriate to prosecute those whose disclosure of their own free will has led to the identification of a fraud of which the council was unaware. Admissions made after enquiries or an investigation had commenced do not constitute voluntary disclosure.

- **Previous incidence of fraud**

Any evidence of previous benefits-related fraudulent activity would form part of the overall 'prosecution assessment', regardless of whether any previous offences resulted in prosecution.

- **Social factors**

If it is considered that the defendant's failure to declare the correct circumstances has been caused by significant extenuating social or financial factors, these would be fully evaluated. The fact that an individual was in debt or has limited assets would not in themselves meet this requirement.

- **Impact on the defendant's future ability to support themselves and / or their family**

When making the decision with regard to further action when an offence has been committed, it is prudent to consider whether the sanction action (for example, prosecution and / or administrative penalty), would have a disproportionately detrimental effect on the defendant's future.

Consideration should be given to the impact of a criminal record on employability and / or impact of an administrative penalty on a defendant's solvency (for example, if a customer has committed the offence as the direct result of considerable and evidenced debts, it may not be advisable for the council to then levy a financial penalty as a punishment).

If a customer has found employment after being in receipt of benefits, which would be jeopardised by a criminal record, it may not be in the public interest to prosecute the defendant if the end result is further unemployment.

- **Adequacy of evidence**

Substantive evidence is essential to secure any conviction. Proceedings would not be sought if there is any doubt that the required evidence is not available. It must be clear that the fraudulent act was actually committed, that it was committed in the full knowledge of the legislation and that it was committed with the clear and deliberate intention to obtain property by deception. Satisfying the requirements of the 'Code for Crown Prosecutors Evidential' Test will ensure that evidence is of the standard required by the courts.

- **Failure in investigation**

It should be evident on the case file that all appropriate procedures have been adhered to with regard to satisfying the requirements of the Police and Criminal Evidence Act 1984, Criminal Procedures and Investigations Act 1996 and other relevant legislation. Particular consideration would also be given to any delay in the course of enquiries, which may be considered as unacceptable by the court.

- **Failure in benefit administration**

Full account will be taken of remiss administration or fault on the part of the council or the Department of Work and Pensions (DWP) that has contributed to the processing of the fraudulent claim and subsequent award of benefit.



## **Post-investigation considerations**

Once the investigating officer has completed the investigation, it will be passed to the Fraud Team Leader, who will consider each case on its merits, applying the criteria in this policy, the Code for Crown Prosecutors and any other circumstances relevant to the case.

The council's legal team will decide whether there is sufficient evidence to provide a realistic prospect of securing a conviction and if so, whether it is in the public interest to offer a caution, offer an administrative penalty or recommend prosecution.

## **Authorisation of sanction or prosecution**

The decision to offer a sanction for example, a caution or administrative penalty, or to commence prosecution proceedings will initially be recommended by the Fraud Team Leader in conjunction with a Partnership Manager. Once agreed, this will be forwarded to the council's legal team for approval.

Cases involving Members or employees will always be referred to the council's solicitor and the appropriate senior manager so that any standards issues can be addressed.

Cases may also referred to the police where it is considered that the nature of the offence, or the procurement of evidence will require them to undertake or assist in the investigation. It may be necessary, on occasion, to vary the level at which sanctions or prosecution are applied in the light of particular circumstances or for operational reasons.

## **Loss of benefit provision**

The 'Loss of Benefit' Provision introduced by the Social Security Fraud Act 2001 is designed to be a deterrent against the continued abuse of the benefit system by applying a benefit sanction against those who commit benefit fraud.

The provision allows the DWP or in standard housing benefit cases, the council to apply a sanction in the form of a fixed 13 week benefit disqualification period where a person is convicted of benefit fraud in two separate proceedings, which have been committed within a five year period.

The provision was extended by the Welfare Reform Act 2009 to include a new four week loss of benefit sanction for all offences of benefit fraud which result in a criminal sanction (for example, convictions, administrative penalties and cautions).

The existing 13 week loss of benefit sanction still applies to those who have been convicted of benefit fraud in two separate proceedings, which have been committed within a five-year period. Benefits can be withdrawn (or reduced by 20% or 40%)

during the disqualification period.

### **Proceeds of Crime Act 2003**

The council will refer all suitable cases for financial investigation with a view to applying to the courts for restraint and / or confiscation of identified assets. A restraint order prevents a person from dealing with specified assets. A confiscation order enables the council's agents to seek to recover its losses from assets found to be the proceeds of crime.

### **Recovery of debt**

In addition to any criminal proceedings or sanction it may impose in respect of offences committed, the council will use all methods available to vigorously recover any overpayment arising from fraud; this includes taking action in the civil courts, if necessary.

### **Publicity**

Press releases will be issued in suitable cases to seek to maximise the deterrent effect and raise the level of public fraud awareness. Consideration will be given to the amounts involved, the nature of the offence, public interest and the deterrent value of publicising a particular case.

At the end of each financial year, the council may also further publicise the numbers of formal cautions and administrative penalties successfully administered as well as the total amount of overpaid benefit identified in respect of cases investigated by the Fraud Investigation Team.

### **Joint working with the DWP**

The council is committed to joint working with partner organisations and in particular with the DWPs' Counter Fraud Investigation Service, the HM Revenue and Customs Special Compliance Team and counter-fraud services operated by other local authorities.

The council will liaise closely with these organisations and will undertake joint investigations and prosecutions with them. Where these organisations lead an investigation in which the council participates, the council shall, having satisfied itself of the evidential test, make the public interest test with reference to the lead organisation's sanctions and prosecution policy.

Wherever practicable, the council will seek to take the same course of action as taken by the lead organisation; however, the council retains the right to take a different course of action where it believes it is in the public interest to do so.

## **APPENDIX**

### **EXTRACT FROM SECTION 5 THE CODE FOR CROWN PROSECUTORS**

**[Crown Copyright is acknowledged]**

#### **The Full Code test**

- 4.1 The 'Full Code' Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage.
- 4.2 In the vast majority of cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. However, there will be cases where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these rare instances, prosecutors may decide that the case should not proceed further.
- 4.3 Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the 'Full Code' Test set out in this section.
- 4.4 Prosecutors must follow any guidance issued by the Director of Public Prosecutions to ensure that decisions in these cases are appropriate and correct.

#### **The evidential stage**

- 4.5 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
- 4.6 A realistic prospect of conviction is an objective test based solely upon the prosecutor's assessment of the evidence and any information that he or she has about the defence that might be put forward by the suspect. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

4.7 When deciding whether there is sufficient evidence to prosecute, prosecutors must consider whether the evidence can be used and whether it is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. In particular, prosecutors will need to consider the following issues:

- **Can the evidence be used in court?**

- a) Is it likely that the evidence will be excluded by the court? There are legal rules that might mean that evidence which seems relevant cannot be given at a trial (for example, is it likely that the evidence will be excluded because of the way in which it was obtained?)
- b) Is the evidence hearsay? If so, is the court likely to allow it to be presented under any of the exceptions which permit such evidence to be given in court?
- c) Does the evidence relate to the bad character of the suspect? If so, is the court likely to allow it to be presented?

- **Is the evidence reliable?**

- d) What explanation has the suspect given? Is a court likely to find it credible in the light of the evidence as a whole? Does the evidence support an innocent explanation?
- e) Is there evidence which might support or detract from the reliability of a confession? Is its reliability affected by factors such as the suspect's level of understanding?
- f) Is the identification of the suspect likely to be questioned? Is the evidence of his or her identity strong enough? Have the appropriate identification procedures been carried out? If not, why not? Will any failure to hold the appropriate identification procedures lead to the evidence of identification being excluded?
- g) Are there concerns over the accuracy, reliability or credibility of the evidence of any witness?
- h) Is there further evidence which the police or other investigators should reasonably be asked to find which may support or undermine the account of the witness?
- i) Does any witness have any motive that may affect his or her attitude to the case?
- j) Does any witness have a relevant previous conviction or out-of-court disposal which may affect his or her credibility?

- k) Is there any further evidence that could be obtained that would support the integrity of evidence already obtained?

- 4.8 Where it is considered that it would be helpful in assessing the reliability of a witness' evidence (or in better understanding complex evidence), an appropriately trained and authorised prosecutor should conduct a pre-trial interview with the witness in accordance with the relevant Code of Practice.
- 4.9 Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

### **The Public Interest Stage**

- 4.10 In 1951, Sir Hartley Shawcross, who was then Attorney General, made the classic statement on public interest "it has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution". He added that there should be a prosecution: "wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest" (House of Commons Debates, Volume 483, 29 January 1951). This approach has been endorsed by Attorneys General ever since.
- 4.11 Accordingly, where there is sufficient evidence to justify a prosecution or to offer an out-of-court disposal, prosecutors must go on to consider whether a prosecution is required in the public interest.
- 4.12 A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour; or unless the prosecutor is satisfied that the public interest may be properly served, in the first instance, by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal (see section seven). The more serious the offence (or the offender's record of criminal behaviour), the more likely it is that a prosecution will be required in the public interest.
- 4.13 Assessing the public interest is not simply a matter of adding up the number of factors on each side and seeing which side has the greater number. Each case must be considered on its own facts and on its own merits. Prosecutors must decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and for those factors to be put to the court for consideration when sentence is passed.

- 4.14 The absence of a factor does not necessarily mean that it should be taken as a factor tending in the opposite direction (for example, just because the offence was not 'carried out by a group' does not transform the 'factor tending in favour of a prosecution' into a 'factor tending against prosecution'.
- 4.15 Some common public interest factors which should be considered when deciding on the most appropriate course of action to take are listed below. The following lists of public interest factors are not exhaustive and each case must be considered on its own facts and on its own merits.

### **Some common public interest factors tending in favour of prosecution**

- 4.16 A prosecution is more likely to be required if:
- a) A conviction is likely to result in a significant sentence
  - b) A conviction is likely to result in an order of the court in excess of that which a prosecutor is able to secure through a conditional caution
  - c) The offence involved the use of a weapon or the threat of violence
  - d) The offence was committed against a person serving the public (for example, a member of the emergency services, a police or prison officer, a health or social welfare professional or a provider of public transport)
  - e) The offence was premeditated
  - f) The offence was carried out by a group
  - g) The offence was committed in the presence of, or in close proximity to, a child
  - h) The offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics
  - i) The offence was committed in order to facilitate more serious offending
  - j) The victim of the offence was in a vulnerable situation and the suspect took advantage of this
  - k) There was an element of corruption of the victim in the way the offence was committed
  - l) There was a marked difference in the ages of the suspect and the victim

and the suspect took advantage of this

- m) There was a marked difference in the levels of understanding of the suspect and the victim and the suspect took advantage of this
- n) The suspect was in a position of authority or trust and he or she took advantage of this
- o) The suspect was a ringleader or an organiser of the offence
- p) The suspect's previous convictions or the previous out-of-court disposals which he or she has received are relevant to the present offence
- q) The suspect is alleged to have committed the offence in breach of an order of the court
- r) A prosecution would have a significant positive impact on maintaining community confidence
- s) There are grounds for believing that the offence is likely to be continued or repeated

### **Some common public interest factors tending against prosecution**

4.17 A prosecution is less likely to be required if:

- a) The court is likely to impose a nominal penalty
- b) The seriousness and the consequences of the offending can be appropriately dealt with by an out-of-court disposal which the suspect accepts and with which he or she complies (see section seven)
- c) The suspect has been subject to any appropriate regulatory proceedings, or any punitive or relevant civil penalty which remains in place or which has been satisfactorily discharged, which adequately addresses the seriousness of the offending and any breach of trust involved
- d) The offence was committed as a result of a genuine mistake or misunderstanding
- e) The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgment
- f) There has been a long delay between the offence taking place and the

date of the trial, unless:

- The offence is serious
  - The delay has been caused wholly or in part by the suspect
  - The offence has only recently come to light
  - The complexity of the offence has meant that there has been a long investigation
  - New investigative techniques have been used to re-examine previously unsolved crimes and, as a result, a suspect has been identified
- g) A prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence and the views of the victim about the effect of a prosecution on his or her physical or mental health
- h) The suspect played a minor role in the commission of the offence
- i) The suspect has put right the loss or harm that was caused (but a suspect must not avoid prosecution or an out-of-court disposal solely because he or she pays compensation or repays the sum of money he or she unlawfully obtained)
- i) The suspect is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. Prosecutors apply Home Office guidelines about how to deal with mentally disordered offenders and must balance a suspect's mental or physical ill health with the need to safeguard the public or those providing care services to such persons
- k) A prosecution may require details to be made public that could harm sources of information, international relations or national security